IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

STERCHI et al. Atty. Ref.: 723-1502

Serial No. 10/821,269 TC/A.U.: 3714

Filed: April 9, 2004 Examiner: Omotosho, Emmanuel

For: BASEBALL VIDEOGAME HAVING PITCHING METER, HERO-MODE AND USER CUSTOMIZATION FEATURES

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May 29, 2009

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Sir:

REPLY BRIEF

Appellant hereby submits this Reply Brief under the provisions of 37 C.F.R. 1.193(b) in response to the Examiner's Answer mailed March 31, 2009. The arguments set forth in the Appeal Brief dated December 9, 2008 are incorporated herein. The following arguments are presented in response to new arguments presented in the Examiner's Answer and to further clarify Appellant's previous positions.

Claims 1-24 and 104-111 are not obvious under 35 U.S.C. §103(a) over Lipson (U.S. Pat. 5,435,554).

For the reasons discussed in the Appeal Brief, Lipson fails to teach or suggest "*after the pitcher character's wind-up has begun, monitoring for user input on the user-operable controller indicating that a pitch is to be released by the pitcher character*;...comparing a time at which the user input is detected to an optimal pitch release timing; releasing the pitch corresponding to the time at which the user input is detected *since the pitcher character's wind-up has begun*; and controlling a timing of a break on the baseball pitch based on the comparison (emphasis added)," as required by independent claim 1. Similar (but not necessarily identical) comments apply to independent claims 9 and 104. Lipson also fails to teach or suggest "*concurrent with the display of the pitcher character's wind-up, displaying and activating a pitch release meter* so that the pitch release meter approaches a target as the pitcher character's windup progresses; *as the pitcher character's windup progresses, monitoring for user input on the user-operable controller requesting release of a baseball pitch* by the pitcher character (emphasis added)" and "comparing the detected position of the release meter to the target...and controlling when a break on the baseball pitch occurs during its flight based on the comparison," as required by independent claim 17.

The Examiner's Answer (pages 6-7) discusses a first gauge 66 and a second gauge 82, and then alleges "Lipson's gauge is used to calculate and determine the trajectory of the pitch ball. Lipson (sic –Lipson's) gauge is no different from a release meter that determines how the pitch ball is released." The Examiner's allegation is incorrect. As unambiguously described by Lipson, the gauge 66 is a *pitch type and quality selector* gauge, and the gauge 82 is a *power* gauge. These two gauges are thus different from a *release* meter. Gauges 66 and 82 do not enable comparison to an *optimal release timing*. Gauges 66 and 82 are directed to different parameters (pitch type, power, etc.) than the parameter (release timing) claimed. Contrary to the Examiner's allegations there are significant differences between Lipson's *pitch type and quality selector* gauge 66 and *power* gauge 82 and a *release* meter. In summary, each of Lipson's *pitch type and quality selector* gauge 66 *power* gauge 82 is not a *release* meter.

The Examiner's Answer (pages 7-8) alleges "Lipson teaches comparison to an optimal release timing." The Examiner's allegation is incorrect. Markers 76, 78 and 80 of gauge 66 designate optimal zone locations for throw quality for a various types of throws such as a pick-off throw (region 68 having marker 76), and a pitch-out throw (region 72 having marker 80). These *quality* markers do not teach or suggest an optimal *release* timing. For example, as explicitly illustrated in FIG. 3a, marker 78 of region 70 of gauge 66 involves a "PERECT GRIP" (e.g., the pitcher's grip pressure on the ball and the way the pitcher holds the ball

relative to the baseball's stitching in real world baseball), not an optimal release timing. That is, a quality marker for "PERFECT GRIP" is completely different than from a marker for optimal release timing. The marker 76 of region 68 in gauge 66 involves a "PICKOFF" (see FIG. 3a) of a leading base runner on, for example, first base, instead of pitch to a batter at home base (see col. 7, lines 6-10). Finally, marker 80 of region 72 in gauge 66 designates a high quality "PITCH OUT" (see FIG. 3a) – known in baseball as a ball that is intentionally thrown high and outside of batter's the strike zone. Accordingly, marker 78 is directed to grip pressure (not optimal timing), marker 76 does not even involve a pitch to a batter, and marker 80 is directed to a quality of a pitch clearly outside of the strike zone (i.e., not intended for the batter to even have a chance to hit). None of these markers 76, 78, 80 thus provides an optimal release timing as a basis of comparison for controlling when a break on the baseball pitch occurs during its flight.

Marker 84 of gauge 82, stating "MAX POWER" (see FIG. 3b) designates a maximum power obtainable for any given pitch. This maximum power marker 84 does not teach or suggest an optimal *release* timing. In fact, Lipson suggests that a maximum power for a pitch might not even be an optimal power (let alone an optimal release timing): "It *may or may not* be desirable to throw a pitch with the maximum power (emphasis added)...." Col. 7, lines 50-53. As evident by the explicit labels "PERFECT GRIP", "PICKOFF", "PITCH OUT", "MAX POWER"

illustrated in FIGs. 3a-3b, none of the markers in gauges 66 and 82 thus designates an optimal release timing.

The Examiner's Answer (pages 8-12) alleges, among other things, "There is absolutely nothing in Lipson's reference that mentioned that displaying the pitch wind up animation while monitoring the gauge *will not work or should not have been tried* (emphasis added)." Appellant disagrees with this allegation. First, this statement "...will not work or should not have been tried" clearly fails to establish a *prima facie* case of obviousness. That is, an allegation that a reference does not establish that a proposed modification to its teachings "will not work or should not have been tried" fails to establish a *prima facie* case that such a proposed modification would have been obvious to one of ordinary skill in the art.

Moreover, the explicit teachings of Lipson teach away from "*after the pitcher character's wind-up has begun, monitoring for user input on the user-operable controller indicating that a pitch is to be released by the pitcher character*;...comparing a time at which the user input is detected to an optimal pitch release timing; releasing the pitch corresponding to the time at which the user input is detected *since the pitcher character's wind-up has begun*; and controlling a timing of a break on the baseball pitch based on the comparison (emphasis added)," as required by independent claim 1 and similar limitations of claims 9 and 104. The explicit teachings of Lipson also teach away from "*concurrent with the display of the pitcher character's wind-up, displaying and*

activating a pitch release meter so that the pitch release meter approaches a target as the pitcher character's windup progresses; *as the pitcher character's windup progresses, monitoring for user input on the user-operable controller requesting release of a baseball pitch* by the pitcher character (emphasis added)" as required by independent claim 17. Namely, Lipson teaches away from displaying gauges 66 and 82 (the alleged release meter as claimed) concurrent with the display of the pitcher character's wind-up and monitoring for user input on the user-operable controller requesting release of a baseball pitch as the pitcher character's windup progresses as required by claim 17. Lipson also teaches away from displaying gauges 66 and 82 *after the pitcher character's wind-up has begun* as required by independent claims 1, 9 and 104.

The time duration of a pitcher's wind-up in real-life baseball is relatively short (e.g., less than two seconds).[1] The Examiner's Answer (page 10) alleges "To display a windup animation while measuring these parameters would have been obvious to one of ordinary skilled in the art wherein motivation is add realism to the game." Similarly, the Examiner' Answer (pages 11-12) alleges "To display the animation of the pitcher pitching the ball while monitoring the pitcher's gauge would have been obvious to one of ordinary skilled artisan in order to add more realism to the simulation." To accomplish the alleged

[1] For example, "A Fundamental Checklist for Pitchers" states "Good pitchers have a time of 1.3 seconds or under from their first movement to the time the ball hits the catcher's glove...." (See page 1 of http://www.arsports.org/docs/baseball/Baseball_Player_Development/PitchersChecklist.pdf).

motivation to one of ordinary skill in the art of adding realism to the simulation, the animated pitchers' wind up is thus relatively short (as in real-life baseball). However, based upon the explicit teachings of Lipson, it is clear that the display of the gauges 66 and 82 is not after the pitcher character's wind-up has begun or concurrent with the display of the pitcher character's wind-up, and that Lipson teaches away from such a modification.

In particular, gauges 66 and 82 are serially displayed. The user must (i) press a control button to start the indicator 74 in the first displayed gauge 66, then (ii) watch the indicator 74 rotate and press a control button to select the throw style/quality using the first displayed gauge 66 while watching the indicator 74 and to start the indicator 86 in the second serially-displayed gauge 82, and then (iii) watch the indicator 86 and select a control button while watching the indicator 86. See col. 7, line 59 to col. 8, line 7.

This serial display of gauges 66, 82 and associated watching of indicator 74, 86 movement and button selection by the user thus make it virtually impossible for all of these required inputs to be received and processed during the relatively brief wind-up session of the pitch as alleged by the Final Rejection and Advisory Action. It is simply improper to ignore these explicit disclosures of Lipson which teach away from claims "hav[ing] these gauges correspond to the wind up session of a pitcher" as alleged by the Final Rejection. Moreover, col. 7, line 68 to col. 8, line 4 of Lipson states, among other things, "After the third time

that a button is depressed [i.e., after the control button is selected while viewing the indicator 86 in step (iii) above], the pitch animation sequence ***begins*** and the game proceeds (emphasis and bracketed insert added)." One of ordinary skill in the art having common sense would have recognized that receiving and processing all of the inputs and serial displaying all of the gauges 66, 82 required for a pitch in Lipson's system would not have been possible during the relatively short period of time that occurs during a pitcher's wind-up. Again, col. 8, lines 2-4 of Lipson emphasizes that these gauges 66, 82 and associated selection by the user occur only after a button is selected during display during the second serially-displayed gauge 82.

Moreover, any proposed modification to Lipson so that the serially-displayed gauges 66 and 82 are displayed during the pitcher's wind up would render the Lipson's teaching unsatisfactory for its intended purpose or change the principle of operation of Lipson's gauges. Namely, the gauges 66 and 82 each have a respective indicator 74, 86 that *repeatedly resets and rotates* until a player presses a button (see, e.g., col. 6, lines 59-65). If both of the gauges 66, 82 were limited in time to the relatively short period of time afforded to a pitcher's wind-up, there would be no time for both the indicators to be repeatedly reset and rotated. That is, Lipson's repeated reset of the indicator 74 and 86 within gauges 66 and 82, respectively, gives the user a relatively long period of time to make a selection in gauges 66 and 82. Lipson's repeated reset operation would thus be

rendered unsatisfactory for its intended purpose if limited to the relatively short period of time for a pitcher's wind-up. There simply would be no time for repeated reset.

As discussed above, instead of displaying gauges 66, 82 during the pitcher's wind-up, Lipson explicitly discloses serial display of the gauges 66, 82 receiving all user inputs for the pitch only prior to the pitch. (*See, e.g.*, col. 7, line 68 *et seq.* stating "A third depress will register the power of the pitch as a function of the indicator 86 position [in the power gauge 82]. After the third time that a button is depressed, the pitch animation sequence **begins** and the game proceeds (emphasis and bracketed insert added).") Col. 10, lines 42-43 of Lipson, stating "Once the power of the pitch has been set, a final **pre**-pitch input is made in state 146 (emphasis added)," confirms that the gauges 66, 82 are not displayed during the pitchers wind-up as alleged by the Examiner.

CONCLUSION

For at least the reasons set forth above and discussed in detail in the previously-filed Appeal Brief, it is respectfully requested that the rejection on appeal be reversed.

Respectfully submitted,

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